

BEFORE THE THREE-MEMBER
ADMINISTRATIVE HEARING PANEL

EMPOWERED PURSUANT TO SECTION 162.961, RSMO.

, also known as)

, by and through co-guardian)

& ; , also known)

as , Parent; , also)

known as , parent,)

)

Plaintiffs/Appellants,)

)

v.)

)

Missouri State Board of Education;)

Missouri Department of Elementary)

And Secondary Education,)

)

Defendants/Appellees,)

)

Missouri School for the Severely)

Handicapped; Missouri School for the)

Deaf,)

Defendants.)

HEARING DECISION

Student's Name:

Parent's Name:

Parent's Attorney: Michael Finkelstein

Managing Attorney

Missouri Protection and Advocacy

Services

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State Education Agency: Missouri State Board of Education;

Missouri Department of Elementary

And Secondary Education; Missouri

School for the Severely Handicapped;

And Missouri School for the Deaf

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Hearing Dates: March 9, 2001

Date of Decision: April 9, 2001

Hearing Panel: Ben Franklin,

Mary Matthews, and

Patrick O. Boyle, Chairman

ISSUES AND PURPOSE OF THE HEARING

This matter has been remanded from the United States Court of Appeals for the Eighth Circuit to determine the appropriate compensatory education remedy arising from the failure of the Missouri State School for the Severely Handicapped (SSSH) to provide student with a free appropriate public education (FAPE) covering the term from January 1, 1993 to January 1, 1994.

TIME LINE INFORMATION

This case was remanded to the U.S. District Court by a decision of the United States Court of Appeals for the Eighth Circuit filed April 26, 2000. Parent's attorney requested a due process hearing panel be assembled in accordance with the remand from the Eighth Circuit by a letter to the Missouri Department of Elementary and Secondary Education received on November 13, 2000. On December 14, 2000 by consent of all parties, the time for decision was extended to February 28, 2001. Time for decision was further extended on January 31, 2001 to April 9, 2001 and, the hearing was scheduled for March 9, 2001 by consent of the parties. Hearing was held as scheduled and, this decision is rendered within the agreed extension of time for decision.

FINDINGS OF FACT

1. Student was born in .
2. A prior three-member administrative hearing panel in an opinion rendered on October 27, 1997 found student to be a child with multiple disabilities, including profound deafness, mild cerebral palsy, spastic quadraparesis, extropia, and cognitive impairments which made the student eligible for special education and related services.
3. The decision of October 27, 1997 held that student's Individualized Education Programs (IEPs) at SSSH were deficient and did not provide FAPE to the student.
4. It was held that the student's primary need was for an intensive language based program which took into consideration student's profound deafness. Sign language instruction during student's tenure at SSSH was not adequate and rendered the SSSH IEPs wholly deficient.
5. The only evidence presented to the prior panel on a proper measure of compensatory services to student was an offer made by SSSH in a letter dated

- June 20, 1995 for 1,836 hours of compensatory education extending beyond age 21. This offer was based upon a calculation awarding student compensatory education computed with a 1.5 multiplication factor for communication skill hours covered by the questioned IEPs. (Defendants Ex 1)
6. Student was awarded 1,836 hours of compensatory services which amounted to approximately two years of education beyond student's twenty-first birthday by the prior panel.
 7. Student's parents appealed the prior panel's decision to Federal District Court seeking one year of compensatory education for every year that student was denied FAPE at SSSH.
 8. The District Court reversed the prior panel's decision holding that the action brought by student's parents was barred by the equitable doctrine of laches and, that student had received FAPE from the SSSH.
 9. Student appealed to the United States Court of Appeals for the Eighth Circuit. On appeal the court held that a two year statute of limitations applied to student's action based upon an analogy to the limitation applied under the Missouri Human Rights Act. (Mo. Ann Stat Section 213.111)
 10. The court further held that student's parents first challenged the placement of student at SSSH in January 1995. Student was placed at the Missouri School for the Deaf (MSD) in January 1994. Thus, student's claim was limited to educational services provided between January 1993 and January 1994.
 11. On appeal the Eighth Circuit further held that the record justified the prior panels finding that student had been denied FAPE while placed with the SSSH.
 12. This case was reversed and remanded by the Eighth Circuit to the District Court with an instruction to refer the matter back to a State panel for determination of the appropriate compensatory education remedy. The court noted that student may be entitled to more than one year of compensatory education because the prior panel held that the optimum time for language acquisition is at a younger age than student's present age.
 13. Student's expert witness at hearing gave an opinion that ten years of compensatory education will be required to determine what student's full potential is.
 14. An expert for SSSH gave an opinion that equal compensation for one school year's lost educational time would be full and adequate compensatory education for the student.
 15. This panel finds that the appropriate educational goals for the student at this time are speculative based upon the evidence presented and, there is no clear consensus among the experts as to the amount of compensatory services which would be appropriate.
 16. Student presently resides in a group home at Fulton, Missouri and is doing well in an American Sign Language environment provided under an individual plan from the Missouri Department of Mental Health (MDMH).
 17. The witness for SSSH testified that SSSH would coordinate the development of a new IEP for the student.

DECISION AND RATIONALE

The panel believes that the SSSH offer to provide two additional years of compensatory education to student past the age of 21 as made on June 20, 1995 is the most appropriate measure of compensatory services for student. Compensatory education must, however, be based upon the student's present level of performance and take into account the present placement in a group home under an individualized plan from MDMH.

This panel finds that the State Education Agency is responsible for developing a new IEP for the student to be offered for implementation at the start of the 2001 to 2002 school year beginning in September 2001 and extending through an extended school year for the summer of 2002. A final IEP should be offered for the 2002-2003 school year beginning in September of 2002.

One component of the IEPs should contain appropriate language and signing services by a certified teacher. Time to be provided should be based on two school years of 174 days at six hours per day for 2,088 hours and, one summer school of 34 days at 3 hours per day or 102 hours for a total of 2,190 hours of special education and related services.

APPEAL PROCEDURE

Either party has the right to appeal this decision within 30 days to a State Court of competent jurisdiction pursuant to Chapter 536 of the Revised Statutes of Missouri, or to a Federal Court.

Panel Members Supporting Decision

Panel Members Opposing Decision

Mary Matthews

Ben Franklin

Patrick O. Boyle